

1 STATE OF NEW YORK

2 COUNTY OF MONROE SUPREME COURT

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK, : IND # 2013-0954

5 -vs- :

6 ANTHONY MILLER, : MOTION
ARGUMENT

7 Defendant. :

8 -----x

9 Hall of Justice
Rochester, New York 14614
January 6, 2014

10

11 B E F O R E:

12 HONORABLE THOMAS E. MORAN,

13 Supreme Court Justice

14 A P P E A R A N C E S:

15 SANDRA DOORLEY, ESQ.
District Attorney - County of Monroe
16 47 South Fitzhugh Street
Rochester, New York 14614
17 Appearing for the People of the State of New York
By: MICHAEL HARRIGAN, ESQ.
18 Assistant District Attorney

19 TIMOTHY P. DONAHER, ESQ.
Public Defender - County of Monroe
20 10 North Fitzhugh Street
Rochester, New York 14614
21 Attorneys for the Defendant
By: JOSHUA STUBBE, ESQ.
22 Assistant Public Defender

23 ANTHONY MILLER
24 Defendant

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CAROL P. RAES, C.S.R.
Senior Court Reporter

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1 THE DEPUTY: Number 17, Anthony Miller.

2 MR. STUBBE: Judge, can we approach?

3 THE COURT: Yes.

4 (An off-the-record bench conference was held between
5 Court and counsel.)

6 MR. HARRIGAN: Sir, you're Anthony Miller?

7 THE DEFENDANT: Yes.

8 MR. HARRIGAN: You're here with your attorney,
9 Mr. Stubbe?

10 THE DEFENDANT: Yes.

11 MR. HARRIGAN: Mike Harrigan for the People.

12 THE COURT: You're here for the purposes of
13 motion argument. Anything in addition to your papers,
14 Mr. Stubbe?

15 MR. STUBBE: No, Judge.

16 THE COURT: All right.

17 MR. HARRIGAN: Your Honor, I talked to Mr.
18 Stubbe. For whatever reason, I didn't get a copy, so I
19 haven't had a chance to respond. I understand there are
20 some hearings Mr. Stubbe is requesting. I would ask for
21 an opportunity to respond. I imagine the Court will set
22 hearings and I'll respond prior to the hearings.

23 MR. STUBBE: Judge, obviously, two of them we
24 will have regardless of Wade and Huntley hearing. I have
25 also moved for a probable cause hearing. I certainly

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1 have made enough factual allegations to warrant a
2 hearing. I would ask that it be set down for all three.
3 If after Mr. Harrigan's papers are received, you don't
4 feel that's necessary, we deal with that at that time.

5 THE COURT: I'm not ignoring you. I'll be
6 with you in just a second. (Pause.) The following is
7 the decision and order of the Court with respect to the
8 motions filed by Mr. Stubbe:

9 Your request for a Bill of Particulars has
10 already been addressed, is that correct, or will be
11 shortly?

12 MR. STUBBE: Will be shortly, I'm sure.

13 THE COURT: To be provided. If there are any
14 additional issues thereafter, please advise me.
15 Discovery has been provided?

16 MR. STUBBE: It has. I only have one request
17 there. I've been given a 911 call, but I believe that in
18 this case in particular, there was probably some -- I
19 believe it's called side channel communications between
20 the officers. Certainly, I could try to subpoena that or
21 if the DA could do it --

22 THE COURT: Are they recorded?

23 MR. HARRIGAN: Sometimes they are, and in my
24 experience, they're not always -- we don't always have
25 them as part of the 911 call. I've provided everything.

1 If he wants a specific one, I don't object to a subpoena.

2 THE COURT: Depends what channel it is. Give
3 me a subpoena and I'll sign it.

4 Molineux, two weeks before trial. Sandoval,
5 immediately before trial. Acknowledge Brady
6 responsibility, please.

7 MR. HARRIGAN: Yes.

8 THE COURT: Grand jury, I'll review grand jury
9 as to legal sufficiency, defective proceedings, and
10 defective indictment.

11 MR. STUBBE: Thank you.

12 THE COURT: Defendant didn't have anybody
13 testify in front of the grand jury, did he?

14 MR. HARRIGAN: No.

15 THE COURT: So you withdraw that request?

16 MR. STUBBE: I do.

17 THE COURT: I'll look at your request to
18 dismiss the indictment. You've asked for Wade and
19 Huntley in addition to it. You've asked that any
20 identification and statements be suppressed because of an
21 illegal arrest.

22 MR. STUBBE: Correct.

23 THE COURT: I'll grant all of the above.

24 MR. STUBBE: Thank you.

25 THE COURT: Give me a minute and I'll give you

1 a date.

2 MR. STUBBE: Okay.

3 THE COURT: What tangible property was
4 received?

5 MR. STUBBE: Judge, I believe his clothing and
6 then also the subsequent identification procedure, the
7 subsequent statements, I would ask that all of that be
8 suppressed for a lack of probable cause.

9 THE COURT: We will give you a hearing. You
10 have probable cause, Huntley, Wade hearing, which will
11 also included Mapp to a great extent. Have you listened
12 to the 911 tape?

13 MR. STUBBE: I have.

14 THE COURT: So you can hear it?

15 MR. STUBBE: Yes.

16 THE COURT: So there's no issue about
17 audibility?

18 MR. STUBBE: Has to do more with the
19 subsequent things that we received, if we receive them.
20 Just covering my bases on that, obviously.

21 THE COURT: Okay. I'm going to defer.

22 MR. STUBBE: Thank you.

23 THE COURT: If there's an issue in the future,
24 we'll deal with it.

25 MR. STUBBE: Okay.

1 THE COURT: I'm not going to make the People
2 provide you with a copy of the transcript. They have to
3 pay for it. You want to ask for one, you can. You asked
4 for a late Notice of Alibi. That's denied. You've asked
5 that the Court and all the participants not call the
6 victim "the victim."

7 MR. STUBBE: The complainant, the victim.

8 THE COURT: Yeah, okay, that's denied, too.
9 I'd prefer no one does, but I'm not going to give you
10 grounds for a mistrial in the event somebody makes a
11 mistake. Sanders; denied. And you've asked for renewal
12 of motions under the circumstances. I'm going to grant
13 you the opportunity to renew motions if they're
14 appropriate.

15 MR. STUBBE: Okay.

16 THE COURT: Normally, I wouldn't do that, but
17 circumstances are such that I will allow it.

18 MR. STUBBE: Thank you.

19 THE COURT: Here, Mr. Stubbe, you can have
20 your motion back.

21 MR. STUBBE: I'll get copies to the Court.

22 THE COURT: I need a hearing date, Sarah.

23 MS. DURBIN: February 4th at 2 o'clock.

24 MR. HARRIGAN: I have a murder trial that
25 week.

1 THE COURT: Can you get somebody else?

2 MR. HARRIGAN: I can -- I can try.

3 THE COURT: You're the best.

4 THE CLERK: Do we have a trial?

5 MS. DURBIN: We're open that week. That's
6 been transferred.

7 THE CLERK: Really?

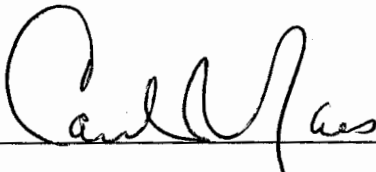
8 THE COURT: Whatever she says. Motions
9 argued. 2/4/14 at 1400 hours or 2 o'clock in the
10 afternoon for the hearings.

11 MR. HARRIGAN: People remain ready for trial.

12 THE DEFENDANT: Thank you, Judge.

13 (Proceedings concluded.)
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15 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT

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18 CAROL P. RAES, C.S.R., Senior Court Reporter
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